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No. 1083 47

In the Supreme Court of the United States

OCTOBER TERM, 1946

AL WILLIAMS AND AL WILLIAMS HEALTH SYSTEM OF LOS ANGELES, INC., A CORPORATION, PETITIONERS

v.

MICHAEL J. FANNING, INDIVIDUALLY AND AS POSTMASTER OF THE CITY OF LOS ANGELES, CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Argument	13
Conclusion	21
Appendix	22

CITATIONS

Cases:

Ainsworth v. *Barn Ballroom Co.*, 157 F. 2d 97	15
American School of Magnetic Healing v. *McAnnulty*, 187 U. S. 94	13, 17, 20
Aycock v. *O'Brien*, 28 F. 2d 817	18
Brooks v. *Dewar*, 313 U. S. 354	15, 16
Chamberlain v. *Lembeck*, 18 F. 2d 408	14, 15
Charles of the Ritz Dist. Corp. v. *Federal Trade Commission*, 143 F. 2d 676	18
Colorado v. *Toll*, 268 U. S. 228	15
Dolphin v. *Starr*, 130 F. 2d 868	14
Doran v. *Charles D. Kaier Co.*, 60 F. 2d 259	14, 15
Elliott Works v. *Frisk*, 58 F. 2d 820	18
Farley v. *Heininger*, 105 F. 2d 79, certiorari denied, 308 U. S. 587	18
Farley v. *Simmons*, 99 F. 2d 343, certiorari denied, 305 U. S. 651	16, 18
Gnerich v. *Rutter*, 265 U. S. 388	15
Greer v. *Cline*, 148 F. 2d 380	14
Jarvis v. *Shackelton*, 136 F. 2d 116	14
Jump v. *Ellis*, 100 F. 2d 130, certiorari denied, 306 U. S. 645	15
Leach v. *Carlile*, 258 U. S. 138	16, 20
National Conference on Legalizing Lotteries, Inc. v. *Goldman*, 85 F. 2d 66	15
Neher v. *Harwood*, 128 F. 2d 846, certiorari denied, 317 U. S. 659	13, 14, 16
Pinkus v. *Walker*, 61 F. Supp. 610	14
Procter & Gamble Co. v. *Federal Trade Commission*, 11 F. 2d 47, certiorari denied, 273 U. S. 717	18
Raladam Co. v. *Federal Trade Commission*, 42 F. 2d 430, affirmed, 283 U. S. 643	18

Cases—Continued. Page

Randle v. *United States*, 113 F. 2d 945, certiorari denied, 311 U. S. 683 18

Reed v. *Goodman*, 83 F. 2d 28, certiorari denied, 299 U. S. 551 14

Ryan v. *Amazon Petroleum Corp.*, 71 F. 2d 1, reversed on other grounds, 293 U. S. 388 14

Scientific Mfg. Co. v. *Walker*, 40 F. Supp. 465 14

Varney v. *Warehime*, 147 F. 2d 238, certiorari denied, 325 U. S. 882 14

Warner Valley Stock Company v. *Smith*, 165 U. S. 28 15

Webster v. *Fall*, 266 U. S. 507 15

Yarnell v. *Hillsborough Packing Co.*, 70 F. 2d 435 15

Statutes:

R. S. 3929 and 4041 (39 U. S. C. 259 and 732) 22, 23

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of California, Central Division (R. 271–275) is not reported. The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 286) is reported at 158 F. 2d 95.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 6, 1946 (R. 287). The

petition for a writ of certiorari was filed March 1, 1947. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Postmaster General is an indispensable party to the action to restrain a local postmaster from carrying into effect a postal fraud order.

2. Whether in the circumstances of the present case the opinion testimony of a medical expert was substantial evidence, sufficient to support the fraud order issued by the Postmaster General.

STATUTES INVOLVED

The pertinent portions of R. S. 3929 and 4041 (39 U. S. C. 259 and 732) are set forth in the Appendix *infra*, pp. 22–23.

STATEMENT

On May 25, 1945, the Post Office Department forwarded to petitioners a memorandum charging them with violations of the postal fraud statutes in connection with their sales through the mails of tablets called "Foods That Take Hunger Away" together with "Al Williams (weight) Reducing Plan" and a "Special Body Massage Creme," and ordered them to show cause why a fraud order should not issue (R. 45, 236). The

memorandum charged that petitioners falsely and fraudulently pretended, represented and promised:

> That obese persons will lose weight easily and safely through use of the said plan regardless of the number of pounds they are overweight or of their age or failure to reduce by other methods;
>
> That the said plan does not include a "strict diet;"
>
> That said tablets contain foods which eliminate hunger, and that the taking of these tablets in connection with the said plan will prevent the users from becoming hungry;
>
> That a few days' use of the said plan and tablets will result in the user's loss of his desire to overeat and cause him to "feel full of pep and have more energy;"
>
> That said "Special Body Massage Creme" will eliminate "flabby flesh" caused by the loss of weight; and
>
> That the said "Creme will beautify the contour of the throat, bust and upper arms, calves of legs and thighs." (R. 45–46, 236–237)[1]

[1] At the hearing, the hearing officer permitted the amendment of the memorandum of charge to include an additional charge on the condition that if petitioners were thereby subjected to any hardship as a result of being unprepared in that charge, the hearing officer would "take care of the situation for [them]" (R. 51). Petitioners have never complained of hardship as a result of the allowance of this amendment.

Petitioners filed an answer denying the charges (R. 52–56).

On June 20, 1945, a hearing was held at Washington, D. C., at which petitioners appeared and were represented by counsel (R. 44). At the hearing numerous advertisements of petitioners' scheme which had appeared in various newspapers and periodicals were introduced, as was printed literature sent by petitioners through the mails in response to test letters (R. 59–90). Excerpts from these materials follow:

> Reducing Can Be Fun With Foods That Take Hunger Away. Try this New Amazing Method! It's simple—easy to follow. No "Canary diets" or strenuous exercises (R. 59, 62).
>
> * * * * *
>
> Men! Women! Amazing New Way to Lose Weight
>
> With Foods That Take Hunger Away! Look younger! Feel Better! If you are overweight SEND NOW for proven plan that has helped thousands from coast to coast shrink 5 to 10 inches around the waist, bust, hips! Get rid of dizziness, shortness of breath, heart palpitation, head and back pains, blood pressure and other symptoms due to excess weight. Send today for FREE information on my proven Reducing Plan with Foods That Take Hunger Away. No starvation diets. No thyroid or harmful drugs. Not sold in

stores. WRITE NOW FOR FREE DATA, Al Williams Health System (R. 60–61).

* * * * *

These food tablets contain NO DRUGS—NO THYROID MATERIALS—NO MEDICINES OF ANY KIND. IN FACT, NOTHING THAT COULD NOT BE GIVEN TO A CHILD WITH SAFETY (R. 71).

* * * * *

REDUCING IS MADE EASY, in a SENSIBLE WAY. It is logical that if you cut down the amount of food usually taken, you are bound to reduce. But the problem arises that when you cut down on your food intake, you become hungry, have a craving for more food, and cannot diet without often injuring your health. It is impossible to go very long on a rigid diet. IT IS NOT DIFFICULT TO STAY WITH MY PLAN. It is amazing what you will be able to do when you CHANGE your blood stream with FOODS that bring you down to your normal weight. Not only will you look better, but you will FEEL BETTER, more ANIMATED and MORE VIGOROUS (R. 66).

* * * * *

These foods, contain 17 different fruits, minerals and vegetables, dehydrated into pleasant tasting tablets. I usually suggest taking of them before meals, and whenever you feel hungry during the day. You will find that after a few days you will not crave to overeat, and you will feel full of pep and have more energy. If you diet

without taking these food supplements, you become too hungry, tired and nervous to stay with a low caloric diet long enough to lose weight. (R. 70–71).

* * * * *

THE SPECIAL BODY MASSAGE CREME which I have found so effective in reducing programs in my own establishments should be used. I have found this Creme very valuable to firm the skin as the fat melts away. When used it tends to tighten the skin so that those pounds you lose won't leave "sags" where extra pounds used to be. It is also beneficial when used as directed to beautify the contour of the throat, bust and upper arms, calves of legs, and thighs (R. 77).

The plan so advertised by petitioners consisted of the taking of tablets in conjunction with a restricted diet. Under the plan the diet was to be restricted to certain lean foods and one tablet was to be taken before breakfast, two at noon, and two before dinner, with the additional tablets to be taken any time during the day. The total tablets taken daily was not to exceed ten (R. 81). The plan operated in two alternate phases; a two-meal-a-day phase, which lasted for eleven days, on the fourth and eighth days of which only tablets were to be taken, together with a liquid, such as vegetables or fruit juice or soup, or even plain water (R. 82); a three-meal-a-day phase, which lasted the rest of the month, during which three meals a

day could be eaten, but only tablets in liquid and no meals were to be taken every third day (R. 82–83). Thereafter the whole program was to be repeated (R. 82).[2]

Chemical analysis showed the tablets to contain sodium and potassium oxides, kelp, iron, calcium oxide, and a trace of iodine (R. 92). Microanalysis of a composite of 15 tablets revealed appreciable amounts of alfalfa leaf and stem, wheat flour and soy bean flour, small amounts of rhubarb root, parsley leaf, spinch leaf, lettuce leaf, beet leaf, celery seed, capsicum fruit, carrot, animal meat tissues and asparagus, and trace of yeast, kelp and ginger rhizome (R. 95). No trace of watercress, endive, escarole, or chicory were found, as marked in the label (R. 96). The analysis of the petitioners' cream showed that it contained phenol, or carbolic acid, volatile oils consisting of menthol, camphor eucalyptus, and water incorporated in a greaseless base (R. 93).

Dr. Lawrence E. Putnam, a physician, who had made a special study of obesity, its causes and treatment, and who had had considerable practice

[2] As part of the plan there was an "Internal Bathing Plan" which consists of a series of enemas which the person following the diet was instructed to follow (R. 84). In lieu of enemas "Activators" could be taken (R. 84). These "Activators" were mild laxatives (R. 212). The plan also included "THE 'Magic Seven' EXERCISES" (R. 84), which, however, were optional and therefore not included in the charges (R. 147).

in internal medicine both in clinics and in the private practice of medicine (R. 103–106), testified that the principal cause of obesity is the eating of more food than the activities of one's body demands (R. 107); that the general principles of reducing are the same for all persons, but the details vary with age, sex, occupation, previous diseases, present physical examination, laboratory tests, etc. (R. 109, 121); and that answers to petitioners' self-analysis chart sent through the mails were inadequate from which to determine whether or not it was safe for a patient to reduce (R. 115) since "all patients should receive a complete history, a complete physical examination and laboratory work when indicated" (R. 116). He testified that some obese persons would be harmed by the loss of "10 pounds * * * in 3 days, 35 pounds * * * in 30 days" and "73 pounds in six months" (R. 117, 119); that some obese people with, for example, tuberculosis, have been made overweight purposely by a physician and would, if they reduced, expose themselves to a reactivation of that disease (R. 110); that a patient with diabetes might, by a sharp reduction in diet, be thrown into acidosis, which is a serious condition (R. 119, 128), and, further, that as a result of low calorie intake, one can get hypoglycemic reactions in which the blood sugar becomes low and the patient may become dizzy and faint (R. 128, 137).

Dr. Putnam's testimony further showed that the diet sold by petitioners was a "strict low calorie diet" (R. 121); that during the two-meal-a-day phase, the diet provided 600 calories daily, except every fourth day when the calorie intake was about 500 calories as a result of taking only the tablets with a liquid (R. 121–123); in the three-meal-a-day phase, the total calorie intake would be about 750 calories daily, except on every third day when only the tablets were taken with a liquid (R. 122); that each of the tablets alone provided about 2 calories (R. 123); that the average obese person took in about 3,500 to 4,000 or more calories per day (R. 123); and that it would not be easy for such a person to follow such diet (R. 124). Dr. Putnam also testified that the food contained in the tablets would not eliminate hunger pains (R. 127, 152); although when taken with a liquid, the liquid might cause hunger pains to disappear temporarily (R. 154–155); that they would not dissipate the craving to overeat, nor would they give more energy or pep (R. 128); and that the diet plus the tablets would not accomplish anything that a low calorie diet alone would not accomplish (R. 131).

In regard to the effect of petitioners' cream on the skin, Dr. Putnam testified that regardless of the length of time it was used, the ingredients of the cream were such that it would have no effect on flabbiness resulting from reduction in weight

(R. 133), nor would it have any effect on the contours of the throat, bust and upper arms, calves of legs and thighs (R. 134).

Petitioners offered no expert medical testimony. Petitioner Al Williams testified that he had started in 1906 as an athlete, boxing and wrestling, up to 1916 as a professional (R. 158); that he had been in the natural conditioning business for a long while (R. 157–160); that he had become interested in concentrated nutrition in 1935 (R. 160–161); that he had experimented on himself for about two years with "amazing results" (R. 161). He, however, was not permitted to give testimony concerning the efficacy of his plan in reducing obesity because he was not qualified to give expert medical testimony (R. 161–164). Various testimonial letters were also rejected on the ground that they were hearsay and the writers thereof were not qualified to give expert medical testimony (R. 169–173), although various letters were received and marked for identification (R. 173–178). On cross-examination, Mr. Williams testified that his weight ran between 220 and 240 pounds (R. 183); that he would be sick if he reduced to 184 pounds, which he was told was the average weight for a man his size (R. 184); that he knew nothing specific about how the particular people to whom he sold his plan reacted under the plan except from the questionnaire of four questions he sent them two months after they had

started the plan (R. 185, 202–203);[3] that people who would be made sick by following the plan would not go beyond their own limitations (R. 185) because "nature won't allow it" (R. 186), and because the persons who buy the tablets "must have intelligence because otherwise they wouldn't buy" (R. 187).

At the close of the hearing, petitioners were furnished a copy of the transcript of the hearing (R. 227); and subsequently moved to reopen the case for the reception of additional testimony to be taken by deposition in Los Angeles, California (R. 228, 260–264). This motion was denied (R. 228, 264). Thereafter, petitioners moved that "all possible scientific tests be made and obtained by the Post Office Department to determine the efficacy of the tablets sold by [petitioners] for the elimination of prevention of hunger when used in connection with the reducing plan" (R. 228). This motion was likewise denied (R. 228). Original and supplemental briefs were filed by petitioners (R. 228).

Upon the basis of the foregoing evidence, the Solicitor of the Post Office Department made findings of fact and recommended that a fraud order be issued (R. 219–228). Thereafter on De-

[3] The four questions were as follows:
Did you follow the food plan?
Did you follow the bathing plan?
Did you take the internal bath as directed?
Did you use the massage cream? How much weight have you lost?

cember 10, 1945, the Acting Postmaster General issued an order to the postmaster at Los Angeles, California, forbidding him to pay any money order drawn to the order of petitioners and directing him to inform remitter of such money order that payment had been forbidden, and to return all letters addressed to petitioners to postmasters at the office where they were originally mailed, for delivery to the sender, with the words: "Fraudulent: Mail to this address returned by order of Postmaster General" written or stamped upon the outside of the letters or other mail matter (R. 257–258).

On January 7, 1946, petitioners filed in the United States District Court for the Southern District of California, a complaint against respondent herein, "Individually and as Postmaster of the City of Los Angeles, California" (R. 2, 231).[4] Alleging that the fraud order was "unsupported by any substantial evidence in fact" (R. 259) and that it was "issued by the Postmaster General without authority and beyond the power granted to him by Congress" (R. 232),[5] the

[4] Copies of the transcript of the proceedings (R. 44–218) and of the "Memorandum for the Postmaster General Embodying a Finding of Fact and Recommending the Issuance of a Fraud Order" (R. 219–228) were filed with the complaint as Exhibits A and B, respectively.

[5] The complaint was amended to eliminate the constitutional questions raised in the original complaint. Compare R. 231–270 with R. 1–43; see Pet. 3, 17.)

complaint prayed that the order be vacated and that respondent be enjoined from carrying out the order (R. 269). Respondent moved to dismiss the complaint on the ground that it failed to state a claim upon which relief could be granted (R. 229).

The district court concluded that the testimony of Dr. Putnam was opinion evidence and, relying on the doctrine of *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, it held that such evidence was insufficient to support the fraud order of the Postmaster General (R. 272–273). However, since the Postmaster General had not been joined as a party, the district court felt bound to dismiss the complaint under *Neher* v. *Harwood*, 128 F. 2d 846, in which the Circuit Court of Appeals for the Ninth Circuit had held that in proceedings such as these the Postmaster General was an indispensable party (R. 274–275, 276). Upon appeal, the court below affirmed *per curiam*, citing *Neher* v. *Harwood*, *supra* (R. 286).

ARGUMENT

The principal question raised by the petition for writ of certiorari, and the only question of general importance, is whether the Postmaster General is an indispensable party in a suit to enjoin a subordinate postmaster from carrying out a fraud order issued by the Postmaster General. There is no question presented as to the

validity of the statute pursuant to which the order was issued; indeed petitioners' complaint was amended to remove all constitutional questions raised in the original complaint (see Pet. 3, 17).

1. The holding of the court below that the Postmaster General is an indispensable party to the instant proceeding follows the earlier decisions of that court in *Neher* v. *Harwood*, 128 F. 2d 846, certiorari denied, 317 U. S. 659, and *Dolphin* v. *Starr*, 130 F. 2d 868. As petitioner contends, the decision herein as well as those decisions conflict with the decisions of the Circuit Court of Appeals for the Sixth Circuit in *Jarvis* v. *Shackelton*, 136 F. 2d 116; *Varney* v. *Warehime*, 147 F. 2d 238, certiorari denied, 325 U. S. 882, and *Greer* v. *Cline*, 148 F. 2d 380.[a] They also probably conflict with the decisions of the Fifth Circuit in *Rood* v. *Goodman*, 83 F. 2d 28, certiorari denied, 299 U. S. 551; *Ryan* v. *Amazon Petroleum Corp.*, 71 F. 2d 1, reversed

[a] *Pinkus* v. *Walker*, 61 F. Supp. 610 (D. N. J.), with which petitioner also claims the instant decision conflicts, itself conflicts with *Scientific Mfg. Co.* v. *Walker*, 40 F. Supp. 465 (M. D. Pa.) which also is in the Third Circuit. Although the Circuit Court of Appeals for the Third Circuit has not passed on the narrow question of whether the Postmaster General is an indispensable party to a suit to vacate a fraud order, it has held that a superior official is an indispensable party to a proceeding to enjoin his subordinate from obeying his orders. *Chamberlain* v. *Lembeck*, 18 F. 2d 408 (C. C. A. 3); *Doran* v. *Charles Kaier Co.*, 60 F. 2d 259 (C. C. A. 3).

on other grounds, 293 U. S. 388; and *Yarnell* v. *Hillsborough Packing Co.*, 70 F. 2d 435. On the other hand, the decisions of the Ninth Circuit accord with those of various other circuits (*National Conference on Legalizing Lotteries, Inc.* v. *Goldman*, 85 F. 2d 66 (C. C. A. 2); *Chamberlain* v. *Lembeck*, 18 F. 2d 408 (C. C. A. 3); *Doran* v. *Charles D. Kaier Co.*, 60 F. 2d 259 (C. C. A. 3); *Ainsworth* v. *Barn Ballroom Co.*, 157 F. 2d 97 (C. C. A. 4); *Jump* v. *Ellis*, 100 F. 2d 130 (C. C. A. 10), certiorari denied, 306 U. S. 645) and is supported by the decisions of this Court in such cases as *Warner Valley Stock Company* v. *Smith*, 165 U. S. 28; *Guerich* v. *Rutter*, 265 U. S. 388, and *Webster* v. *Fall*, 266 U. S. 507. Although the later decision of this Court in *Colorado* v. *Toll*, 268 U. S. 228, has been variously interpreted in the lower federal courts as limiting or overruling those decisions, no necessity exists in this case to determine their applicability or to resolve these conflicts among the various circuit courts of appeal.

This is true because the result in the instant case can be clearly supported on the independent ground that the complaint fails to state a cause of action. In *Brooks* v. *Dewar*, 313 U. S. 354, which arose on demurrer to a bill to enjoin a subordinate of the Secretary of the Interior, it was contended that the Secretary was an indispensable party.

However, this Court declined to pass upon this and related questions, saying (313 U. S. 359–360):

> We are not disposed to attempt a critique of the authorities. Since the jurisdiction and the procedure of the court below are sustained by decisions of this Court, we are unwilling to base our judgment upon a resolution of asserted conflict touching issues of so grave consequence, where, as here, the bill fails to make a case upon the merits.

The instant case presents a parallel situation, except that here there is no occasion for this Court to grant certiorari even for purpose of determining whether the complaint states a cause of action (see Brief for Respondent in Opposition in *Neher* v. *Harwood*, No. 292, October Term, 1942), since, contrary to the holding of the district court, the transcript of the proceedings before the Post Office Department, which was attached to the complaint as Exhibit A, plainly shows that the order of the Postmaster General is supported by substantial evidence.[1]

2. Petitioners (see e. g. Pet. 19–28, 28–36) attack the sufficiency of the evidence supporting the fraud order here involved solely on the basis

[1] We do not understand petitioners to contend that the fraud order of the Postmaster General may be set aside if it is supported by substantial evidence; in any event, it is settled law that it may not be set aside in such circumstances. *Leach* v. *Carlile*, 258 U. S. 138; *Farley* v. *Simmons*, 99 F. 2d 343 (App. D. C.), certiorari denied, 305 U. S. 651.

that, as they claim, the testimony of the Post Office Department's expert witness is opinion evidence of the character which this Court in *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, held was not adequate to sustain a fraud order issued by the Postmaster General. The District Court's holding that the fraud order was not supported by substantial evidence was based on the same reasoning (R. 272–273). The opinion testimony, however, rejected in the *McAnnulty* case was addressed to the claim that "the mind of the human race is largely responsible for its ills * * * and that [it] does possess the innate power, through proper exercise of the faculty of the brain and mind, to largely control and remedy the ills that humanity is heir to * * *" (187 U. S. at 103).*

The opinion evidence in the *McAnnulty* case related to a field of knowledge where there was a

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* In regard to such opinion testimony, this Court said: "How far these claims are borne out by actual experience may be matter of opinion. Just exactly to what extent the mental condition affects the body, no one can accurately and definitely say. * * * Even intelligent people may and indeed do differ among themselves as to the extent of this mental effect. * * * The claim of the ability to cure may be vastly greater than most men would be ready to admit, and yet those who might deny the existence or virtue of the remedy would only differ in opinion from those who assert it. There is no exact standard of absolute truth by which to prove the assertion false and a fraud. We mean by that to say that the claim of complainants cannot be the subject of proof as of an ordinary fact; * * * (187 U. S. at 104).

sharp division of opinion among those learned in the field and where there were no fixed guideposts which were generally accepted. That case is consequently inapplicable where the opinion testimony involved was based on scientific facts which have become generally accepted through advance of medical knowledge. *Farley* v. *Heininger,* 105 F. 2d 79, 84 (App. D. C.), certiorari denied, 308 U. S. 587; *Aycock* v. *O'Brien,* 28 F. 2d 817 (C. C. A. 9); *Randle* v. *United States,* 113 F. 2d 945, 949 (App. D. C.), certiorari denied, 311 U. S. 683; *Procter & Gamble Co.* v. *Federal Trade Commission,* 11 F. 2d 47 (C. C. A. 6), certiorari denied, 273 U. S. 717; *Raladam Co.* v. *Federal Trade Commission,* 42 F. 2d 430, 435 (C. C. A. 6), affirmed, 283 U. S. 643; *Elliott Works* v. *Frisk,* 58 F. 2d 820, 822–823 (D. C. S. D. Iowa); cf. *Farley* v. *Simmons,* 99 F. 2d 343, 347 (App. D. C.), certiorari denied, 305 U. S. 651; *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission,* 143 F. 2d 676, 678–679 (C. C. A. 2).

Here, the question concerned petitioners' claims as to their scheme for reducing as to which there is very little division in scientific opinion (R. 135). The causes of obesity are well known as are the problems and difficulties of weight reducing. Petitioners' representation to the effect that all persons could safely follow their scheme (R. 68, 71, 73), which petitioners claimed did not involve canary or starvation diets (R. 59, 60, 61,

70), were shown to be false by testimony, which although commonly catagorized as "opinion" was actually expressing conclusions based on the application of well-known and accepted scientific knowledge to undisputed facts. For example, the fact that the diet here involved was a strict low calorie diet was determined from the caloric value of the food included in the diet and of the tablets (R. 121–123) which contained only two calories (R. 123); and the testimony that the tablets alone would not eliminate hunger pains was based on medically accepted causes of hunger and their elimination (R. 127, 152). In addition, the testimony that some people could not, because of the state of their health, safely lose weight rapidly, or even gradually, under petitioners' or any other scheme of dieting is based on accepted medical knowledge (R. 109–137). As a matter of fact, the testimony of petitioner Al Williams accords therewith since, although he claimed to be in good health and physical condition (R. 161, 183, 184), he admitted on cross-examination that he would become sick if he attempted to reduce from his then weight of 220 to 230 pounds down to 185 pounds, the average weight for men his size (R. 184), a loss of weight of about 40 pounds, which petitioners' circular represented could be achieved with safety under their scheme (R. 117, 119). The only reason he suggested that obese persons following the plan would not be made ill by the loss of weight was

that "they can't go beyond their own limitations" (R. 185). Similarly, the testimony that the cream would not have the effect represented was likewise based on the known actions of its ingredients (R. 93, 133, 134). In light of these considerations, we submit that the opinion testimony of the medical expert, being based on accepted scientific facts, was not the type of opinion evidence condemned in the *McAnnulty* case and clearly was sufficient to support the fraud order here involved.

Moreover, petitioners represented that because of the tablet feature of their plan, any obese person, regardless of age, could lose weight safely and easily irrespective of his success or failure with other plans (R. 68), whereas the testimony showed that it was no different from any other strict low calorie diet plan and that it was subject to all the difficulties inherent in such a diet. Accordingly, as in *Leach* v. *Carlile*, 258 U. S. 138, the *McAnnulty* case, regardless of its scope, is here inapplicable, since the plan "was so far from being the panacea which [they were] advertising it through the mails to be, that by so advertising it [they were] perpetrating a fraud upon the public." 258 U. S. at 139.*

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* Petitioners' implied claim (Pet. 27) that they were denied a full hearing by virtue of the denial of their motion to reopen the case in order to take depositions of medical witnesses is obviously unsound, since they were notified at the outset of the hearing that the practice was not to hear cases piecemeal and that if for any reason they wished to apply for a

CONCLUSION

While the decision below is in conflict with the opinions of other Circuit Courts of Appeal on the indispensable party question, there is no need here to resolve the conflict since the decision can be sustained on the independent ground that the complaint failed to state a cause of action, the fraud order being supported by substantial evidence. The petition should therefore be denied.

Respectfully submitted.

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APRIL 1947.

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continuance of the hearing, they should accordingly so move at that time (R. 48). No such motion was made and the hearing proceeded (R. 49).

APPENDIX

R. S. 3929 (39 U. S. C. 259) provides, in part, as follows:

> The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such mail matter to the postmaster at the office at which it was originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such mail matter so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster General may prescribe. Nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself. * * *

R. S. 4041 (39 U. S. C. 732) provides, in part, as follows:

> The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any postmaster to said person or company of any postal money orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders.
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> This shall not authorize any person to open any letter not addressed to himself.

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